

As the author of the petition here, I have been contacted privately by litigants asking me to speak on their behalf in this forum. (They tell me they are afraid of retribution in their ongoing cases if their names are published.) As litigants who have been deprived of their constitutional right to a speedy trial (i.e., suffered violation of the Arizona Constitution's 60-day Rule), they are, of course, in favor of my petition. But that, of course, is hearsay and is not what I'm offering here. I'm offering their good suggestion.

As background, these litigants share a common theme. Their overdue cases were missed in the Superior Court Clerk's Rule 91(e) audit, the Quarterly Report of Submitted Matters. Not only are they upset because their constitutional right was violated, they are doubly upset because the system didn't catch the violation. As it relates here, they are concerned about the practical implications of the latter and want to offer a solution to the problem.

The problem is, violations missed by the audit make it more difficult for them (or a member of the Bar) to prove judicial misconduct. Missed cases make it difficult for someone else in the future to show a pattern and practice of misconduct. Indeed, the Commission on Judicial Conduct tempers its disciplinary rulings on what it knows about a judge's history. The Commission requires accurate data to make accurate rulings.

[As an aside, in my admittedly anecdotal research, I was told these quarterly audits are done by hand. Speaking as an engineer, these grunt-work audits are a perfect application for computer software. Isn't it a simple matter for the Case Management Software to start a counter when a matter is submitted and flag it to the Clerk when beyond 60 days?]

For example, in the Hinson matter cited in my petition, even though it would be his fourth warning, the Commission on Judicial Conduct considered a mere 30-day suspension for his numerous 60-day violations.¹ Fortunately, the hearing panel rejected this, perhaps because of his prominent twenty-five violations documented over three years. Suppose, though, the Clerk had missed a majority of the twenty-five cases reported? (From what judge Hinson's litigants tell me, the Clerk already missed a third.) Absent the hard evidence, the outcome in Hinson might have been vastly different. And that would have been a gross miscarriage of justice.

Doubly stung then and not wanting the same to happen to others, the litigants had a good suggestion. They would like the Court to create a public avenue whereby anyone can anonymously submit information to the Supreme Court Finance Office and the Superior Court Clerk when a matter goes beyond 60-days. (Like the "Silent Witness" program, anonymous to avoid retribution. So that no one knows which party—or court staffer or attorney—complained when a matter is reported overdue.) There should be no objection to this from the Court as it would be keeping within the spirit and the letter of the law the Legislature gave judges.

Specifically, A.R.S. § 12-128.01 says "A superior court judge or commissioner shall not receive his salary unless such judge or commissioner either certifies that no cause before such judge or commissioner remains pending and undetermined for sixty days after it has been submitted for

¹ See Minute entry for May 11, 2009, case number 08-308.

decision . . . " By providing an avenue for the public to notify the Finance Office and the Clerk of a violation of the 60-day Rule, the Office can then cross-check with the Clerk to ensure that A.R.S. § 12- 128.01 has been complied with before releasing a paycheck to a judge.

Again, as I'm sure the judiciary wishes to comply with the law (as required by common sense and the Code of Conduct), there can be no objection to this. Clearly, no judge who is complying with the law has reason to object to this additional oversight, as he will come through shining like stars.²

Further, since the Arizona Association of Superior Court Clerks says in their comment to my petition that these violations hardly ever happen, this suggestion should not pose a paper processing hardship on anyone. (Not that the law should be ignored if it's a hardship to enforce, but I quote the AASCC saying it will not be a hardship so as to preempt that objection.)

Of all the actors involved in litigation, individual litigants are the most keenly aware of the status of their case, especially when the clock starts ticking and their lives are held in suspended animation while they anxiously await a ruling from a judge. We should take advantage of their watching eyes.

In the past, the Arizona Judiciary has been very proactive in improving jurisprudence, empowering juries for example, setting the pace for other states to follow. We can continue to set the pace by allowing the public direct input to the system, so that there will be immediate (monetary) feedback for errant judges. Allowing the public a way to affect paychecks will virtually guarantee our right to a speedy trial as our constitution guarantees. And in exactly the way the Legislature intended.

As a bonus, this will go a long way to upholding the integrity of the judiciary, keeping judges above reproach.

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² There is a Biblical (and common sense) principle that without being tested, it is impossible to know one's true character.